

HOUSE No. 4051

By Mr. Cabral of New Bedford, petition of Antonio F. D. Cabral and Mark C. Montigny (with the approval of the mayor and city council) for legislation to authorize the city of New Bedford to adopt regulations for the protection and control of public housing in said city. Housing. [Local Approval Received.]

The Commonwealth of Massachusetts

PETITION OF:

Antonio F. D. Cabral
Mark C. Montigny
Robert M. Koczera

John F. Quinn
Stephen R. Canessa

In the Year Two Thousand and Seven.

AN ACT TO ADOPT PROTECTIONS FOR NEW BEDFORD'S GOVERNMENTALLY INVOLVED HOUSING STOCK.

1 *WHEREAS*, the City of New Bedford desires to adopt protec-
2 tions for governmentally involved housing;
3 *WHEREAS*, the City of New Bedford is petitioning the General
4 Court for passage of legislation authorizing such a change;
5 *WHEREAS*, a majority vote of approval by the New Bedford
1 City Council is required for the filing of such petition;
2 *NOW THEREFORE*, be it voted by the city council of the city
3 OF New Bedford, as follows:
4 *Ordered*: That a petition to the General Court, accompanied by
5 a bill for a special law relating to the city of New Bedford to be
6 filed with an attested copy of this order be, and hereby is,
7 approved under Clause (1) of Section 8 of Article 2, as amended,
8 of the Amendments to the Constitution of the Commonwealth of
9 Massachusetts, to the end that legislation be adopted precisely as
10 follows, except for clerical or editorial changes of form only:

Be it enacted by the Senate and House of Representatives in General Court assembled, and by the authority of the same, as follows:

1 SECTION 1. *Whereas*, a serious public emergency exists with
2 respect to the housing of citizens in New Bedford residing in gov-
3 ernmentally-involved housing, in as much as there is a threat that
4 many low-income individuals and families residing in such
5 housing, particularly those elderly and disabled, may be threat-
6 ened with displacement as a result of prepayment of mortgage
7 financing, loss of use restrictions, expiring subsidy contracts, and
8 expected increases in rent, and there is a threat that affordable
9 housing stock will be lost due to expiration of use restrictions and
10 subsidy contracts and such pre-payment, further exacerbating an
11 extreme housing shortage within the city for low-income families
12 and voters, and whereas, in approving Chapter 40 P of the General
13 Laws, the voters did not exempt such housing from protection or
14 regulation and whereas it is the city's policy to encourage owners
15 of this governmentally-involved housing to accept incentives to
16 keep such housing affordable and avert displacement, that such
17 emergency should be met by the city of New Bedford immedi-
18 ately; therefore, this act is declared to be in the public interest.

1 SECTION 2. (A) Notwithstanding the provisions of any general
2 or special law to the contrary, including, without limitation, the
3 provisions of chapter forty P of the General Laws and chapter 282
4 of the Acts of nineteen hundred and ninety-four, for so long as the
5 City Council of New Bedford shall determine that the circum-
6 stances described in section one hereof continue to exist, the City
7 of New Bedford shall by ordinance regulate the rent for use or
8 occupancy of governmentally-involved or formerly governmen-
9 tally-involved housing to the extent such regulation is not pre-
10 empted by federal law or by section six of chapter 708 of the Acts
11 of nineteen hundred and sixty-six as amended, once the basis for
12 federal or state rent regulation or preemption no longer exists,
13 except that market units in projects formerly assisted under sec-
14 tions 25 through 27 of chapter 23 (a) of the General Laws shall
15 not be deemed to be regulated by the state for purposes of this act.
16 For purposes of this act, "governmentally-involved housing" is
17 defined as housing units which the United States, the Common-
18 wealth or any authority created under the laws thereof (i) insures
19 the mortgage thereon, or owns, operates, finances, or subsidizes
20 such housing units, and (ii) regulates the individual rents thereof,

21 including without limitation housing units constructed or rehabili-
22 tated pursuant to Section 202 of the Housing Act of 1959, as
23 amended (12 U.S.C. § 1701q), Sections 221(d) and 236 of the
24 National Housing Act, as amended (12 U.S.C. §§ 1715l(d) or
25 1715z-1), Section 811 of the Cranston-Gonzalez National Afford-
26 able Housing Act, as amended (42 U.S.C. § 8013), or Section 13A
27 of chapter 708 of the Acts of nineteen hundred and sixty-six,
28 added by Section 10 of chapter 855 of the Acts of nineteen hun-
29 dred and seventy, as amended (M.G.L. c. 23A App. § 1-13A), or
30 housing units financed or subsidized pursuant to project-based
31 programs for low-income persons under Section 8 of the United
32 States Housing Act of 1937, as amended (42 U.S.C. § 1437f) or
33 the project-based Massachusetts Rental Voucher Program, so-
34 called (see line item 7004-9004 of Section 2 of chapter 159 of the
35 Acts of two thousand, as well as 760 C.M.R. Part 49.00), but not
36 including the following:—

37 (1) housing units owned or acquired by the City of New Bed-
38 ford through tax foreclosure;

39 (2) housing units in a building or structure of fewer than
40 twenty-five units which are not part of a larger housing develop-
41 ment, whether on one or more sites;

42 (3) structures containing housing units subsidized with mobile
43 tenant-based rental assistance that would not otherwise come
44 within the definition of governmentally involved housing;

45 (4) public housing owned or operated by the New Bedford
46 Housing Authority under chapter 121Bf of the General Laws, the
47 United States Housing Act of 1937 (42 U.S.C. §§ 1437a et seq.),
48 or any successor act or public housing programs formerly assisted
49 under the United States Housing Act of 1937;

50 (5) housing units where the sole government involvement is the
51 owner's participation in federal, state, or municipal funded pro-
52 grams for home repairs, energy conservation, or lead paint abate-
53 ment.

54 (6) housing units which become governmentally involved after
55 January 1, 2002; For the purpose of this act, “formerly govern-
56 mentally-involved housing” is defined as housing which was gov-
57 ernmentally-involved housing as of July 1, 1996 or which
58 becomes governmentally-involved housing after July 1, 1996 but
59 which then no longer is owned, operated, financed, subsidized,

60 mortgage-insured, or rent-regulated by the United States, the
61 Commonwealth, or any authority created under the laws thereof,
62 provided that “formerly governmentally involved housing” shall
63 include any housing receiving subsidy under Section 8(t) of the
64 United States Housing Act of 1937 (42 U.S.C. § 1437f(t)).

65 For the purpose of this act, “low-income” is defined as annual
66 household income which is eighty percent or less of the median
67 income for the area as determined by the United States Depart-
68 ment of Housing and Urban Development, with adjustments for
69 smaller and larger families.

70 The City of New Bedford shall by ordinance create an official
71 body to establish as the maximum rent for the governmentally-
72 involved and formerly governmentally-involved housing units the
73 rent in effect therefore on July 1, 1996 or six months before the
74 basis for federal or state rent regulation or preemption lapsed,
75 whichever is later, adjusted to insure such rent provides a fair net
76 operating income as of the date of the official body’s decision,
77 provided, however, said ordinance shall authorize the official
78 body to make individual adjustments in such maximum rents as
79 may be necessary to remove hardships or to correct other
80 inequities.

81 In making individual adjustments to remove hardships or to
82 correct other inequities, the official body shall observe the prin-
83 ciple of maintaining maximum rents for such housing units at
84 levels which will yield to owners a fair net operating income from
85 such housing units. In determining whether the maximum rent for
86 such housing units yields a fair net operating income, due consid-
87 eration shall be given to, among other relevant factors:
88 (1) increases in property taxes; (2) unavoidable increases in oper-
89 ating and maintenance expenses; (3) major capital improvement of
90 the housing units, distinguished from ordinary repair, replace-
91 ment, and maintenance; (4) increases or decreases in living space,
92 services, furniture, furnishings or equipment; and (5) substantial
93 deterioration of the housing units, other than ordinary wear and
94 tear, or failure to perform ordinary repair, replacement, or mainte-
95 nance.

96 (B) Such ordinance shall provide that no person shall bring an
97 action to recover possession of a governmentally-involved
98 housing unit, or of a formerly governmentally involved housing

99 unit, to the extent that such regulation is not otherwise preempted
100 by federal law or section six of chapter 708 of the acts of nineteen
101 hundred and sixty-six as amended, unless:

102 (1) the tenant has failed to pay the rent to which the owner is
103 entitled;

104 (2) the tenant has violated an obligation or covenant of tenancy
105 not inconsistent with chapter 93A of the General Laws or this act
106 other than the obligation to surrender possession upon proper
107 notice, and has failed to cure the violation after having received
108 written notice thereof;

109 (3) the tenant is causing, committing, or permitting a nuisance
110 in, or substantial damage to, the housing unit, or is creating sub-
111 stantial interference with the comfort, safety, or enjoyment of the
112 owner or other occupants of the same or any adjacent unit;

113 (4) the tenant has used or permitted use of a housing unit for
114 illegal purposes;

115 (5) the tenant, who had a written lease or rental agreement
116 which has terminated, has refused, after written requests or
117 demand by the owner, to execute a written extension or renewal
118 thereof for a further term of like duration on terms not inconsis-
119 tent with or violative of any provision of this act;

120 (6) the tenant has refused the owner reasonable access to the
121 housing unit for the purpose of making necessary repairs or
122 improvements required by law, or for the purpose of inspection as
123 permitted or required by the lease or law, or for the purpose of
124 showing the housing unit to any prospective purchaser or mort-
125 gagee;

126 (7) the tenant holding at the end of a lease term is a subtenant
127 not approved by the owner; or

128 (8) the owner seeks to recover possession for any other just
129 cause not in conflict with the provisions and purposes of this act
130 or chapter 93A of the General Laws.

131 The provisions of this section shall be construed as additional
132 restrictions on the right to recover possession of such housing
133 units.

134 (C) Such ordinance shall also provide that no person shall
135 remove any governmentally-involved or formerly governmentally-
136 involved housing accommodation from low-income rental housing
137 use (including but not limited to sale, lease, or other disposition of

138 the property which may have such an effect), or convert such
139 property to a condominium or cooperative, without first obtaining
140 a permit for that purpose from the official body, to the extent that
141 such provision is not preempted by federal law or section six of
142 chapter 708 of the acts of nineteen hundred and sixty-six as
143 amended. Such permit may be subject to terms and conditions not
144 inconsistent with the purposes and provisions of this act,
145 including, without limitation, (a) incentives to continue in effect
146 the low-income restrictions previously in place for the property
147 and (b) where sale, lease, or disposition of the property may result
148 in the loss of all or a portion of the property for low-income rental
149 housing use, the right of an incorporated tenants association in
150 such housing, the city of New Bedford, the New Bedford Housing
151 Authority, or non-profit community development corporations to
152 negotiate for, acquire and operate such property on substantially
153 equivalent terms and conditions as offered or available to a bona
154 fide third-party purchaser.

155 (D) To the extent not preempted by federal law or section six of
156 chapter 708 of the acts of nineteen hundred and sixty-six as
157 amended, such ordinance shall require that owners of governmen-
158 tally-involved housing, or formerly governmentally involved
159 housing, affirmatively seek out and accept any prospective gov-
160 ernmental housing resources, whether tenant-based or project-
161 based, which maximize affordability of the housing units
162 consistent with the income character of the property and the
163 owner's right to obtain a fair net operating income for the housing
164 units, provided that the City shall assist owners by identifying
165 such governmental housing resources.

166 (E) To the extent not preempted by federal law or section six of
167 chapter 708 of the acts of nineteen hundred and sixty-six as
168 amended, and so long as such regulation is consistent with the
169 owner's right to obtain a fair net operating income, such ordinance
170 shall also provide that the City may establish local preferences,
171 priorities, and income limits for admission to governmentally-
172 involved housing or formerly governmentally-involved housing
173 upon unit turnover, consistent, to the extent practicable, with the
174 income profile of the property twelve months prior to the date of
175 the loss of rent preemption or the decision to not renew an
176 expiring subsidy contract. The official body may approve an alter-

177 nate plan requested by the owner, consistent with the provisions of
178 this act. No ordinance or regulation shall require an owner to
179 create a tenancy involving any person with a history of conduct
180 which would, if repeated, be grounds for eviction from such
181 housing.

182 (F) Such ordinance shall also provide that the official body may
183 grant exemptions and exceptions to the general provisions of this
184 act when such action would tend to maintain or increase the
185 supply of affordable housing in New Bedford, including, without
186 limitation, promoting the sale of properties to bona fide tenant
187 organizations or non-profit community development corporations
188 under terms and conditions which would tend to maintain the
189 income character of the property.

190 (G) Such ordinance shall provide that the official body may
191 promulgate such rules, regulations and orders as it may deem nec-
192 essary to effectuate the purposes of this act and the ordinance. The
193 board may hold hearings on any matters within its authority under
194 this act and ordinance. Any hearings regarding matters related to
195 regulation of rents or removal permits for governmentally
196 involved or formerly governmentally involved housing or
197 regarding compliance with other provisions of this act, or the ordi-
198 nance, orders, rules, or regulations adopted or promulgated here-
199 under, shall be conducted by the official body in accordance with
200 the provisions of section eleven of chapter thirty A of the General
201 Laws except that requirements (7) and (8) of such section eleven
202 shall not apply to such hearings.

203 (H) All decisions of the official body may be appealed to the
204 housing court department of the trial court, Southeast Division, by
205 any person aggrieved thereby, whether or not previously a party in
206 the matter, within thirty calendar days after notice of such deci-
207 sion. Judicial review of adjudicatory decisions shall be conducted
208 in accordance with section fourteen of chapter thirty A of the
209 General Laws. Judicial review of regulations shall be conducted in
210 accordance with section seven of chapter thirty A of the General
211 Laws. The housing court department of the trial court, Southeast
212 Division, shall have jurisdiction to enforce the provisions hereof
213 and any ordinance, rule or regulation adopted hereunder, and on
214 application of the board or any aggrieved person may restrain or
215 enjoin violations of any such ordinance, rule, or regulation. In the

216 interests of justice, the court may allow any necessary parties to
217 be joined in or to intervene in any action brought hereunder and
218 may in its discretion allow or require an action to proceed as a
219 class action.

1 SECTION 3. It shall be unlawful for any person to do or omit
2 to do any action in violation of this act, or any order, ordinance,
3 rule or regulation adopted or promulgated hereunder. Whoever
4 willfully violates any provision of this act or any order, ordinance,
5 rule or regulation adopted or promulgated hereunder or whoever
6 makes a false statement in any testimony before the board or its
7 agents, or whoever knowingly supplies the official body with false
8 information shall be punished by a fine of not more than four hun-
9 dred dollars or by imprisonment for not more than ninety days, or
10 both; provided, however, that in the case of a second or subse-
11 quent offense, or where the violation continues after notice
12 thereof, such person shall be punished by a fine of not more than
13 two thousand dollars, or by imprisonment for not more than one
14 year, or both.

1 SECTION 4. The provisions of this act are severable, and if any
2 of its provisions shall be held unconstitutional or otherwise
3 invalid by any court of competent jurisdiction, the decision of
4 such court shall not affect or impair any of the remaining provi-
5 sions.

1 SECTION 5. The provisions of M.G.L. c.40P shall not apply to
2 any ordinance adopted under this enabling authority.

1 SECTION 6. This act shall take effect upon passage.